

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 5124 of 2007

Shashikant D. Dhumal .. Petitioner
versus
State of Maharashtra & ors. .. Respondents

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Mr.S.P. Thorat for the petitioner.

Mr.A.A. Kumbhakoni Associate Advocate General for
respondent nos.1 and 2.

Mr.Milind Deshmukh for respondent no.3.

Mr.A.V. Anturkar i/b S.B. Deshmukh for respondent
no.4

CORAM : S.B. MHASE AND

D.G.KARNIK, JJ

DATED : 1st August 2007.

P.C.:

. Heard learned counsel for the parties.

2. We are inclined to issue rule but reject
the interim relief for the reasons indicated below.

3. Elections to the managing committee of the

respondent no.3 co-operative society took place in the year 2002 and the alleged disqualification under section 73 (1AB) is alleged to have been incurred by the respondent nos.4 to 34 in the year 2002. The present petition has been filed in the year 2007 after five years and that too when the election programme for electing new managing committee has been declared. Date of filing the notification is 4th August 2007 and elections are to be held on 16th September 2007. The gross delay of nearly 5 years has not been explained at all.

4. Apart from that what we find that the question whether these respondents 4 to 34 are deemed to have vacated the office or not is required to be adjudicated by the Registrar under section 78 of the Maharashtra Co-operative Societies Act, 1960 (for short "the Act") as already held by a Division Bench of this Court in Kesharao Narayanrao Patil Vs. District Dy. Registrar Co-operative Societies, Akola and others reported in 1978 Mh.L.J. 711. In the absence of an enquiry in exercise of writ jurisdiction to prevent the lawfully elected managing committee to act will be an unjustifiable act on our part. We also find that probably the Registrar can also invoke section 77A of the Act but that is also the power of the Registrar. What is to be taken into

consideration is that even though the alleged vacating of the office by the respondents 4 to 34 is alleged to have taken place in the year 2002, petitioner has not approached the Commissioner of Sugar, who is the Registrar for the society in question, till June 2007 i.e. just a few days earlier to the filing of the petition. Thus, taking into consideration all the facts we find that the delay and latches on the part of the petitioner are writ large and object of the petition is not to protect the society from the hands of the managing committee members who have allegedly failed to comply the requirement of section 73 (1AB) of the Act but with a colateral purpose or motive i.e. to get a mileage in the ensuing elections. We cannot forget that the provisions like section 73(1AB) is a protection offered to the members of a society and to the society from the reckless negligence acts of the managing committee members for which they are made personally liable by requiring them to file their own affidavit and bond to that effect and thereby creating a personal liability against those managing committee members. Thus, the period of the managing committee members who have allegedly not executed the said bond is about to be over and the protection which probably the petitioner desired to have is of no consequence in the facts and circumstances of the

present case.

5. We are of the view that the object of the petition is not to protect the society and its members from the reckless acts on the part of the managing committee members as desired u/s.73(1AB) but is otherwise. This court will certainly exercise its extra ordinary jurisdiction under section 226 in favour of a person who is vigilant and diligent in execution of his own rights and comes with clean hands and with bonafide intention to this court, but certainly would not grant an interim relief where the object and motive of the petitioner is collateral and bonafide. We find that the bonafides are lacking with the petitioner and therefore, we refrain to grant interim relief in favour of the petitioner.

6. On our expressing that we are not inclined to grant interim relief, learned counsel for the petitioner submitted that the petition may be rejected summarily as wants to approach the Supreme Court. Hence on the statement of the learned counsel for the petitioner, the Writ Petition is rejected.

(D.G. KARNIK, J)

(S.B. MHASE, J)